

AMENDED IN ASSEMBLY MAY 12, 2011

AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 22

Introduced by Assembly Member Mendoza
(Coauthors: Assembly Members Allen and Davis, and Huffman)

December 6, 2010

An act to add Chapter 3.6 (commencing with Section 1024.5) to Part 2 of Division 2 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as amended, Mendoza. Employment: credit reports.

The federal Fair Credit Reporting Act (FCRA) and the state Consumer Credit Reporting Agencies Act define and regulate consumer credit reports and authorize the use of consumer credit reports for employment purposes, pursuant to specified requirements. The FCRA provides that it does not preempt state law, except as specifically provided or to the extent that state laws are inconsistent with its provisions.

Existing federal and state law specify the procedures that an employer is required to follow before requesting a report and if adverse action is taken based on the report. Under existing law, an employer may request a credit report for employment purposes so long as he or she provides written notice of the request to the person for whom the report is sought. Existing law requires that the written notice inform the person for whom the consumer credit report was sought of the source of the report and contain space for the person to request a copy of the report. Existing law further requires an employer, whenever he or she bases an adverse employment decision on information contained in a consumer credit

report, to advise the person for whom the report was sought that an adverse action was taken based upon information contained in the report and provide the person with the name and address of the consumer credit agency making the report.

This bill would prohibit an employer, with the exception of certain financial institutions, from obtaining a consumer credit report, *as defined*, for employment purposes unless the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, or confidential information, and (2) the position of the person for ~~which~~ *the person whom the report* is sought is a position in the state Department of Justice, a managerial position, *as defined*, that of a sworn peace officer or other law enforcement position, or a position for which the information contained in the report is required to be disclosed by law or to be obtained by the employer.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 3.6 (commencing with Section 1024.5)
- 2 is added to Part 2 of Division 2 of the Labor Code, to read:
- 3
- 4 CHAPTER 3.6. EMPLOYER USE OF CONSUMER CREDIT REPORTS
- 5
- 6 1024.5. (a) An employer shall not use a consumer credit report,
- 7 *as defined in subdivision (c) of Section 1785.3 of the Civil Code*,
- 8 for employment purposes unless the following criteria are satisfied:
- 9 (1) The information contained in the report is substantially
- 10 job-related, meaning that the position of the person for whom the
- 11 report is sought has access to money, other assets, or confidential
- 12 information.
- 13 (2) The position of the person for whom the report is sought is
- 14 any of the following:
- 15 (A) A managerial position.
- 16 (B) A position in the state Department of Justice.
- 17 (C) That of a sworn peace officer or other law enforcement
- 18 position.

1 (D) A position for which the information contained in the report
2 is required to be disclosed by law or to be obtained by the
3 employer.

4 (b) This section does not apply to a person or business subject
5 to Sections 6801 to 6809, inclusive, of Title 15 of the United States
6 Code and state and federal statutes or regulations implementing
7 those sections if the person or business is subject to compliance
8 oversight by a state or federal regulatory agency with respect to
9 those laws.

10 (c) *For purposes of this section, “managerial position” means*
11 *a position held by a person who has authority, in the interest of*
12 *the employer, to hire, transfer, suspend, lay off, recall, promote,*
13 *discharge, assign, reward, or discipline other employees, or*
14 *responsibly to direct them, or to adjust their grievances, or*
15 *effectively to recommend such action, if in connection with the*
16 *foregoing the exercise of this authority is not of a merely routine*
17 *or clerical nature, but requires the use of independent judgment.*